

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

GENE H. SWENSON,

Plaintiff,

v.

OXFORD BANK & TRUST,

Defendant.

DOCKETED

JAN 16 2003

No.

03 C 00336

Civil Action

MAGISTRATE JUDGE MASON

JUDGE ZAGEL

U.S. DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION
FILED-FOA
03 JAN 16 PM 12:33

COMPLAINT

NOW COMES the Plaintiff, Gene H. Swenson, by and through his attorneys, Henry N. Novoselsky and Jack L. Haan of Shaheen, Novoselsky, Staat & Filipowski, P.C., and for his Complaint against the Defendant, Oxford Bank & Trust, states and alleges as follows:

Parties

1. Plaintiff, Gene H. Swenson ("Swenson"), is and at all relevant times was a citizen of the State of Michigan.

2. Defendant, Oxford Bank & Trust ("Oxford Bank") is an Illinois chartered bank organized under the laws of the State of Illinois, having its principal place of business at 1100 West Lake Street, Addison, Illinois, and thus is a citizen of the State of Illinois.

Jurisdiction and Venue

3. This Court has jurisdiction over this Complaint pursuant to 28 U.S.C. § 1332 because Swenson shares no common citizenship with the Defendant Oxford Bank and because the amount in controversy exceeds, exclusive of interest and costs, the sum of \$75,000, specified

in 28 U.S.C. § 1332.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391 (a) because the Defendant Oxford Bank resides in this District, and because a substantial part of the events giving rise to the causes of action alleged below against the Defendant arose in this District.

Facts

5. In and about June, 1999, Plaintiff Swenson, a retiree, opened an Individual Retirement Account ("IRA") with the Defendant Oxford Bank. The monies set up in Plaintiff Swenson's IRA constituted substantially all of his assets.

6. In establishing the IRA with Defendant Oxford Bank, the parties executed an "IRA Simplifier" document, which identified the IRA as a "managed trust" and named Defendant Oxford Bank as the Trustee of the IRA.

7. At all times relevant hereto, Defendant Oxford Bank, as Trustee of the IRA, had the fiduciary duties and obligations a) to exercise due and appropriate care as a prudent investor would do in consideration of the purposes, terms, distribution requirements and other circumstances of the trust; b) to diversify the investments of the trust unless the trustee reasonably believes it is in the interest of the beneficiaries and furthers the purpose of the trust not to diversify, and c) to pursue an investment strategy that considers both the reasonable production of income and safety of capital, consistent with the purposes of the trust.

8. Defendant Oxford Bank's investment and management of the IRA breached its fiduciary duty to Plaintiff Swenson in at least the following manners:

- a) Failing to act as a prudent investor would do in consideration of the purposes, terms and other circumstances of the trust;
- b) Failing to diversify the assets of the IRA, thus unnecessarily exposing the overall assets of the trust to volatility and imprudent risks;

- c) Failing to take steps to preserve the assets in the IRA by reallocating assets; and
- d) Failing to pursue an investment strategy that considered the reasonable production of income and the safety of the capital for the beneficiary.

9. As a result of Defendant Oxford Bank's actions and omissions, the value of the IRA assets dramatically declined, causing injury and damage to the beneficiary and Plaintiff Swenson in the amount of \$309,000.

WHEREFORE, Plaintiff, Gene Swenson, demands judgment against Defendant, Oxford Bank & Trust, in the amount of \$309,000, reasonable attorney's fees, interest, costs, and punitive damages, and further relief the Court deems just.

Plaintiff,
GENE H. SWENSON

By: 

One of His Attorneys

Henry N. Novoselsky
Jack L. Haan
Shaheen, Novoselsky, Staat & Filipowski, P.C.
20 North Wacker Drive, Suite 2900
Chicago, IL 60606
(312) 621-4400
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

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Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the Northern District of Illinois.

Plaintiff(s): **GENE H. SWENSON**

Defendant(s): **OXFORD BANK & TRUST**

County of Residence:

County of Residence: DuPage County, IL

Plaintiff's Atty: Henry N. Novoselsky and Jack L. Haan
Shaheen, Novoselsky, Staat & Filipowski, P.C.
20 N. Wacker Drive, Suite 2900
Chicago, IL 60606
(312) 621-4400

Defendant's Atty:

DOCKETED

JAN 16 2003

JUDGE ZAGEL

03 C 00336

II. Basis of Jurisdiction:

4. Diversity (complete item III)

MAGISTRATE JUDGE MASON

III. Citizenship of Principal Parties
(Diversity Cases Only)

Plaintiff: -2 Citizen of Another State
Defendant: -1 Citizen of This State

IV. Origin :

1. Original Proceeding

V. Nature of Suit:

380 Other Pers Property Damage

VI. Cause of Action:

Breach of Fiduciary Duty by Defendant Trustee

VII. Requested in Complaint

Class Action:
Dollar Demand:
Jury Demand: No

VIII. This case IS NOT a refiling of a previously dismissed case.

Signature:

Date:

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, print this form, sign and date it and submit it with your new civil action. **Note: You may need to adjust the font size in your browser display to make the form print properly.**

Revised: 06/28/00

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

Eastern Division

In the Matter of

Gene H. Swenson,
Plaintiff,
v.

Oxford Bank & Trust,
Defendant

Case Number:

03 C 00336

JUDGE ZAGEL

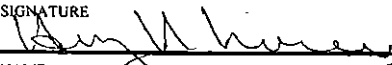
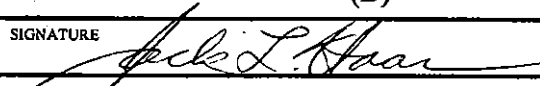
APPEARANCES ARE HEREBY FILED BY THE UNDERSIGNED AS ATTORNEY(S) FOR:

Plaintiff, Gene H. Swenson

MAGISTRATE JUDGE MASON

DOCKETED

JAN 16 2003

(A)	(B)
SIGNATURE 	SIGNATURE 
NAME Henry N. Novoselsky	NAME Jack L. Haan
FIRM Shaheen, Novoselsky, Staat & Filipowski, P.C.	FIRM Shaheen, Novoselsky, Staat & Filipowski, P.C.
STREET ADDRESS 20 N. Wacker Drive, #2900	STREET ADDRESS 20 N. Wacker Drive, #2900
CITY/STATE/ZIP Chicago, IL 60606	CITY/STATE/ZIP Chicago, IL 60606
TELEPHONE NUMBER (312) 621-4400	TELEPHONE NUMBER (312) 621-4400
IDENTIFICATION NUMBER 2070006	IDENTIFICATION NUMBER 06210936
MEMBER OF TRIAL BAR? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	MEMBER OF TRIAL BAR? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
TRIAL ATTORNEY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	TRIAL ATTORNEY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
	DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
(C)	(D)
SIGNATURE	SIGNATURE
NAME	NAME
FIRM	FIRM
STREET ADDRESS	STREET ADDRESS
CITY/STATE/ZIP	CITY/STATE/ZIP
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DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>	DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>